

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

LARRY E. EALY,

Plaintiff,

vs.

PAUL FOSTER, et al.,

Defendants.

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Case No. 3:08cv194

JUDGE WALTER HERBERT RICE

DECISION AND ENTRY ADOPTING REPORT AND RECOMMENDATIONS
OF UNITED STATES MAGISTRATE JUDGE (DOC. #3) IN THEIR
ENTIRETY, AND OVERRULING PLAINTIFF'S OBJECTIONS THERETO
(DOC. #4); JUDGMENT TO ENTER, DISMISSING THE PLAINTIFF'S
COMPLAINT, WITH PREJUDICE, FOR FAILURE TO STATE CLAIMS
UPON WHICH RELIEF CAN BE GRANTED; ANTICIPATED REQUEST FOR
LEAVE TO APPEAL *IN FORMA PAUPERIS* DENIED; TERMINATION
ENTRY

Pursuant to the reasoning and citations of authority set forth by the United States Magistrate Judge, in his Report and Recommendations filed July 11, 2008 (Doc. #3), as well as upon a thorough review of this Court's file and the applicable law, this Court adopts said Report and Recommendations in their entirety, and overrules the Plaintiff's Objections(Doc. #4) thereto.

In ruling as aforesaid, this Court makes the following, non-exclusive, observations:

1. The Plaintiff's Complaint against the Defendant, Paul Foster, is a Complaint over which this Court lacks subject matter jurisdiction; rather, given that said claim sounds purely in state law, with no allegations of diversity alleged in or apparent on the fact of the Complaint, the jurisdiction over said claim is limited to a state court of competent jurisdiction.

2. The remaining Defendants are judicial officers, having acted within the course and scope of their judicial duties, when ruling against Plaintiff in his state court litigation. Accordingly, the centuries-old doctrine of judicial immunity prevents a lawsuit against them to recover monetary damages.

3. Although Plaintiff infers and alludes to the fact that the Defendants acted in concert in depriving him of his constitutional rights, in violation of § 1983, a claim over which this Court would have subject matter jurisdiction, such a claim, between an employee of a transmission company and Judges of the state court of Common Pleas and Court of Appeals is, to put it mildly, beyond speculation.

4. Given that an appeal from this Court's decision, while subjectively not frivolous, would be objectively so, this Court denies Plaintiff an anticipated request for leave to appeal *in forma pauperis*.

5. Accordingly, the Magistrate Judge's decision to dismiss the captioned cause, pursuant to 28 U.S.C. § 1915(e)(2)(B), is well taken.

WHEREFORE, based upon the aforesaid, having overruled the Plaintiff's Objections (Doc. #4) to the Magistrate Judge's Report and Recommendations (Doc. #3), thus adopting said judicial filing in its entirety, orders the entry of judgment in favor of the Defendants and against Plaintiff, thus dismissing the captioned cause, with prejudice, and denying any anticipated request for leave to appeal *in forma pauperis*.

The captioned cause is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

/s/ Walter Herbert Rice

September 29, 2008

WALTER HERBERT RICE, JUDGE
UNITED STATES DISTRICT COURT

Copies mailed to:

Larry Ealy, *Pro Se* Plaintiff